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perform the contract or his right to hold and enjoy it. It was held, however, that the objection was not well taken and the demurrer was overruled. *United States v. Dietrich*, 126 Fed. Rep. 671. The court was of the opinion that the purpose and effect of this legislation is to absolutely inhibit all contractual relations with the United States upon the part of any member of or delegate to Congress,—save in the instances specifically excepted by section 3740; that the inhibition is not alone against undertaking or executing such an agreement or contract, but also against holding or enjoying one—that is, having or retaining the title thereto or receiving the benefits thereof; and that upon the defendant becoming a senator, the contract in question was at once dissolved, and his obligation to perform it and his right to hold and enjoy further benefit under it were terminated by operation of law. This seems to be the first case in which this section of the statutes has been before the courts for construction. The same question, however, was presented in 1809 by the Secretary of the Navy to Attorney-General Rodney, for his opinion, and a conclusion directly opposite to that reached by the court in this case was pronounced. 5 Op. A. G. 697. The Attorney-General was of the opinion that the statute was directed against only such contracts as were made by a member of the Congress with the government, after he became such member. It is to be observed that the decision of the court makes it possible, though perhaps somewhat remotely, for a person to avoid a contract with the government by his own act; and also that it gives an effect to the statute different from that provided for in the act itself, namely, that a contract "made" in violation of its provisions shall be void.

EXEMPTION OF LAWYERS FROM SERVICE OF CIVIL PROCESS WHILE ATTENDING COURT.—In a recent case in North Carolina an attorney-at-law, resident in the state of New York, while in North Carolina for the purpose of representing his client in the United States court in a cause then and there pending, was served with a summons in an action for debt. Upon motion the sheriff's return of service was set aside, and the Supreme Court held on appeal that this was error. *Greenleaf v. People's Bank of Buffalo* (1903), — N. C. —, 45 S. E. 638.

The opinion of the court is rather meagre, quotations from BLACKSTONE and from TAYLOR ON EVIDENCE being the only authority given. But an able concurring opinion filed by Chief Justice CLARK goes much more fully into the matter, and discusses the extent and limitations of the doctrine with considerable reference to the decided cases. The court holds that attorneys are not exempt either from arrest or from service of process without arrest, although the first is mere dictum. As to exemption from service of process without arrest:—the Chief Justice states in his concurring opinion that "a careful examination shows no ground for the alleged exemption of lawyers from service of summons. There is no precedent in England to sustain the proposition, and none in this country, save a single case, a very recent one—*Hoffman v. Circuit Judge*, 113 Mich. 109, 71 N. W. 480, 38 L. R. A. 663, 67 Am. St. Rep. 458 — which holds that a lawyer resident in the same state is privileged from service of a summons while attending the Supreme Court of the state or going or returning therefrom; but none of the authorities cited in that opinion sus-

tains its conclusions. The reason given in the opinion is that while by statute in that state the prohibition of the arrest of counsel in a civil suit is restricted to the actual sitting of a court at which he is engaged, this does not repeal the common law exemption of counsel from service of summons. But, on the other hand, the most eminent lawyer which that state (Michigan) has produced, Judge COOLEY, in a note to his work on *CONSTITUTIONAL LIMITATIONS* (5th Ed.) p. 161, says, 'Exemption from arrest is not violated by the service of citation or declaration in civil cases.' Besides, there was at common law no exemption of lawyers from service of process other than arrest."

There is, however, *some* authority besides this case which sustains the rule that attorneys are not subject to be served with summons or other civil process without arrest, during their attendance upon the court. In *Whitman v. Sheets*, 20 Ohio C. C. 1, a case decided in 1899, the defendant, an attorney-at-law and a resident of Putnam county, Ohio, was in Hancock county, Ohio, for the sole purpose of representing his client in a case there pending, and immediately after the hearing and before he could leave the court house, he was served with a summons. A motion to quash was sustained, and on this appeal the ruling was affirmed. The court said: "The action of the court upon the first motion is in accord with the rule of public policy, which in the proper administration of justice recognizes the necessity of safe conduct to suitors and counsel to and from jurisdictions foreign to those of their residence and locality, and that counsel and client whose presence are necessary at the forum wherein the rights of the suitor are pending, may be free to come and go without incurring liability or submitting to inconvenience, which otherwise to avoid, he must absent himself from the jurisdiction in which the client's interests are being determined. The rule applies to counsel as well as to suitor. It requires no argument to reach the conclusion that the presence of counsel is always necessary, and at times and upon occasions far more necessary than the presence of the client himself. So that the application of this rule by the trial court in support of the first motion was far from erroneous."

In *Central Trust Co. v. Milwaukee St. Ry. Co.*, 74 Fed. 442, an attorney, resident in New York, was served with a subpoena to attend hearings as a witness while he was in Wisconsin solely for the purpose of representing his client in matters pending before the United States Circuit Court sitting in that state. Judge SEAMAN held that service of such process should be set aside on motion, as a violation of the protection which the law extends to all persons necessarily attending upon courts of justice. And in *Parker v. Hotchkiss*, 1 Wall. Jr. 269, the United States circuit court sitting in Pennsylvania declared it to be the practice in that state to exempt attorneys from service of summons while engaged in attending court, and an instance was given of such protection being accorded by Judge SHARWOOD to an attorney from a neighboring county who was attending the United States court. The limitations upon this rule are suggested in *Parker Savings Bank v. McCandless*, 6 Penn. C. C. 327, where the court says: "There is good reason for exempting an attorney from arrest or service of summons while in actual attendance as court. . . . There is good reason for exempting from service of process an attorney from another county in attendance on the United

States courts or in the Supreme Court. There might be good reason for exempting from service of process an attorney of another county casually here and admitted to practice for a special case. But there is no more real necessity or propriety for exempting our own attorneys from service of process—except in presence of the court—than for exempting a merchant who is engaged in purchasing goods, or a bank officer during the banking hours.” The case was of an attorney regularly admitted to practice in the court which he was attending when served, who happened to reside in another county.

As to an attorney's exemption from arrest on civil process while engaged in attendance upon the court, there is no doubt about the common law rule. In *Wheeler's Case* (1750), 1 Wilson's Rep. 298, an attorney was arrested by a *latitat*, and it was held by the whole court that it was a motion of course to discharge him out of custody on filing common bail. In TIDD'S PRACTICE vol. 1, p. 193, it is stated that “attorneys and other officers, on account of the supposed necessity of their attendance, in order to transact the business of the courts, are generally speaking, privileged from arrest.” So in *Humphrey v. Cumming*, 5 Wind. 90, it was held that the defendant was properly discharged from arrest upon its being shown that he was an attorney actually attending court for the purpose of making a motion, and that his personal attendance was deemed necessary to the interest of his client. And in the much earlier case of *Commonwealth v. Ronald*, 4 Call, 97, the Court of Appeals of Virginia held that “there is no point more clear. Parties attending their suits are privileged; so are their attorneys and witnesses: and so the judges must be. . . . The privilege is part of the common law of England which we have adopted.” In *Elam v. Lewis*, 19 Ga. 608, Justice LUMPKIN points out very clearly and forcibly the differences in the position of attorneys in England and in the United States, and concludes that no reason for privilege from arrest exists in this country, although he says: “That by the common law, attorneys are privileged from arrest, either on *mesne* or final process, there can be no doubt.” The extent of the privilege from arrest is now largely regulated by statute.

LAW GOVERNING THE VALIDITY OF A NOTE EXECUTED AND DELIVERED IN ONE STATE, BUT PAYABLE IN ANOTHER.—The Supreme Court of Wisconsin has recently decided a case of more than ordinary interest. A real estate agent living in Massachusetts and his principal, who resided in Wisconsin, met in the city of New York relative to a sale of land owned by the principal and situated in Florida. Certain promissory notes were made in favor of the agent, such notes being executed and delivered on Sunday and made payable in Massachusetts. *Brown v. Gates* (1904), 97 N. W. Rep. 221, 98 N. W. Rep. 205.

In an action on these notes the question was squarely presented as to whether the law of the place of the execution and delivery or that of the fixed place of performance should govern in determining the validity of the notes. In deciding that Massachusetts was the *place* of the contract, and that therefore the statute of that state making void all executory contracts made on Sunday applied to the notes, the Court said: “When a contract is made in one state